

**COMMONWEALTH OF PENNSYLVANIA
PROFESSIONAL STANDARDS AND PRACTICES COMMISSION**

**DEPARTMENT OF EDUCATION,
Petitioner,**

v.

**JOHN W. FUNK,
Respondent.**

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DOCKET NO. DI-04-29

MEMORANDUM AND ORDER

This matter is before the Professional Standards and Practices Commission (“Commission”) upon the Department of Education’s (“Department”) Motion for Summary Judgment, which seeks the revocation of Respondent’s teaching certificate. Initially, the Department filed a Notice of Charges against Respondent on December 2, 2004¹, alleging that the Respondent had been convicted of the crimes of Attempted Aggravated Indecent Assault (18 Pa.C.S. §901) and Criminal Use of Communication Facility (18 Pa.C.S. §7512(a)).

In its Motion for Summary Judgment, filed simultaneously with the Notice of Charges, the Department requests the Commission to revoke Respondent’s Instructional I teaching certificate endorsed in the area of Elementary K-6 and any and all other certificates issued to him by the Commonwealth of Pennsylvania pursuant to sections 5(a)(11.1) and 9.2 of the Professional Educator Discipline Act, 24 P.S. §§2070.5(a)(11.1) and 2070.9b. Section 9.2(2) of the Professional Educator Discipline

Act requires the Commission to direct the Department to revoke the certificate of a professional educator convicted of a crime involving moral turpitude, a crime listed in section 111(e) (1) through (3) of the Public School Code of 1949, or a crime from another jurisdiction that is equivalent to the crimes that fall under the two preceding categories whenever a certified copy of the verdict, judgment or sentence of court is filed with the Commission. 24 P.S. §1-111(e) (1) – (3) and §2070.9b(2).

In support of its Motion, the Department attached certified copies of the pertinent court documents reflecting Respondent's conviction. Respondent, having been served by certified mail with the Notice of Charges and the Motion for Summary Judgment, failed to respond to either pleading. Accordingly, the facts alleged in the Notice of Charges are deemed admitted. 22 Pa. Code §233.115(e)(1); 1 Pa. Code §35.37.

In the instant case, there is no dispute that Respondent was convicted of Attempted Aggravated Indecent Assault and Criminal Use of Communication Facility. Thus, the only question before the Commission is whether these crimes, or any of these crimes, involve moral turpitude, are listed in section 111(e) or are equivalent thereto. The determination of whether a crime involves moral turpitude is based solely upon the elements of the crime or misdemeanor. The facts underlying the charges are not relevant to the issue of moral turpitude. 22 Pa. Code §237.9(b); Startzel v. Commonwealth, Department of Education, 128 Pa. Commonwealth Ct. 110, 114, 652 A.2d 1005, 1007 (1989).

When the crime under scrutiny involves Criminal Attempt, the Commission's inquiry is focused on the underlying attempted offense. In the instant case, the underlying crime of Aggravated Indecent Assault is an enumerated offense under

1 The Department was unable to serve the Respondent successfully until June, 2006.

section 111(e) of the Public School Code and thus revocation is mandated. Having reached this determination, there is no reason to reach the question of whether the remaining crime for which Respondent was convicted also involves moral turpitude. Accordingly, there is no genuine issue as to any material fact and revocation of Respondent's teaching certificate will be ordered as a matter of law.

ORDER

AND NOW, this 27th day of July, 2006, upon consideration of the Motion for Summary Judgment filed by the Department of Education, it is hereby ORDERED that the professional teaching certificate issued to Respondent John W. Funk shall be REVOKED by the Department pursuant to sections 5(a)(11.1) and 9.2 of the Professional Educator Discipline Act, *as amended*, 24 P.S. §§ 2070.5(a)(11.1) and 2070.9b.

PROFESSIONAL STANDARDS AND
PRACTICES COMMISSION

BY: _____

David J. Krauser
Chairperson

ATTEST: _____

Carolyn Angelo
Executive Director

Date Mailed: